

**Why a Bill of Rights?**  
A Unit of Study for Grade Seven  
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**Content Essay**

This essay discusses the proposal of a Bill of Rights, the role of the Bill of Rights as a means to ratify the Constitution as well as the origin of these rights. It is interesting to note that although the Bill of Rights is considered by many to be the most cherished document of our history it was not something that was planned from the beginning but rather as an after thought to secure passage of another document considered to be far more important at that time.

*The proposal for a Bill of Rights:*

Near the end of the Constitutional Convention held in Philadelphia in the summer of 1787 a group of men were adding the final touches to changes they had made in the proposed government. It is known that their original charge was not to change our form of government completely, but rather fix some of the larger problems with the Articles of Confederation. No matter what the original intent, the men did in fact work tirelessly to create a brand new form of government by which to govern the country.

“A few important rights were secured in the main body of the Constitution they drafted. But in the first 15 weeks of the 16 week convention, the idea of a general guarantee of rights was not raised, even though eight of the 13 states had such bills in their constitutions.” (Black pg. 74).

Near the close of this convention, George Mason, a Virginian and writer of that state's constitution and bill of rights, spoke up suggesting a bill of rights be added to the newly created document. He believed that a declaration of rights was necessary to ensure that the government not take too much power from the citizens. Elbridge Gerry of Massachusetts seconded the idea. By a vote of 10-0 the idea of adding a bill of rights was struck down. The long hot session wrapped up and delegates returned home to work at getting the Constitution ratified by their own states. As a result of the defeat, both George Mason and Elbridge Gerry refused to sign the Constitution. They believed that the delegates acted hastily in vetoing the idea simply because they were hot, tired, and wanted to get back to their business at home.

Mason, a well-respected individual and articulate writer, having authored both Virginia's Constitution and Bill of Rights, would suffer lasting repercussions

from his decision not to sign the Constitution. He was however adamant about his decision and it is said he would have rather cut off his hand than signed a document without a bill of rights.

*Role the Bill of Rights played in ratifying the Constitution:*

At the close of the Constitutional Convention the state delegations had voted 10-0 against the idea of a bill of rights. It was said in various ways that a bill of rights was not needed at a national government level because these rights were guaranteed at the state level in their constitutions. However, the lack of a bill of rights became the focus point during the ratification process.

When we think about the Constitution the first thing that comes to mind is the Bill of Rights, for this is what many people today consider to be the most important portion of the Constitution. "And when we think of the Constitution, another thought buzzing around our brains somewhere is of the framers, the 55 wig wearing demigods who wrote our basic national charter at the Constitutional Convention in 1787." (Black pg. 73).

How is it then that the same group of people did not create the two simultaneously? Some historians say that the group was tired and just wanted to go home. Others point to the fact that several individual states had already included Declarations of Rights in their own constitutions and therefore national ones would just repeat. It was said by many that a bill of rights separate from those guaranteed by the state constitutions was not needed. Why give a federal government powers it may not have by writing a document that guarantees freedoms to individuals. If specific rights are guaranteed does that mean that those not mentioned, as individual rights become rights of the federal government? No one had an answer.

In the ensuing debates, the rights and power of the federal government became cause for concern. Some of the Anti-Federalists feared that the independence of states would be overcome by the national government. Those delegates from the smaller states had cause for alarm, even though Rufus King, eloquent orator from Massachusetts, "promised Ellsworth and other small state delegates that the rights of all states would be maintained under a national governments as the fundamental rights of individuals are secured by express provisions in the State Constitutions." (Rutland pg. 112).

In all truth, "the Bill of Rights was born an orphan, the offspring of a quarrel between two giants of America's founding generation." (Rutland pg. 78).

Anti-Federalists, such as Patrick Henry, who favored a weak national government, wanted to see a bill of rights added to the Constitution as a condition of ratification. Their hope was to meet again at a new convention and redraft the Constitution yet again. The theory was that a second meeting “Henry and other Anti-Federalists who had boycotted the first convention, or left early, would not make that mistake again. They would stay to make sure that the second convention protected states’ power.” (Black pg. 80). The best case scenario for those Anti-Federalists opposed to the Constitution was to support the addition of a bill of rights and then completely change the document in a new convention, much as the first delegates had done when they closed the doors and began creating a new form of government rather than fixing the Articles of Confederation.

James Madison and the Federalists on the other hand “recognized that their opponents had a powerful campaign issue. Here was their counter-strategy: Conceding that a bill of rights was needed; they would urge the states to ratify unconditionally while recommending amendments to secure rights.” James Madison promised to then work tirelessly to secure these individual rights during the first meeting of Congress. The Federalists narrowly beat the Anti-Federalist in the verbiage of the ratification vote and thus “The Constitution was ratified and the Bill of Rights became the first campaign promise in constitutional history.” (Black pg. 80).

In retrospect one can say that we acquired what is perceived by many to be the most influential part of the Constitution with a bit of luck and a lot of political bartering. Although Madison never wanted a bill of rights he conceded in order to achieve ratification for the Constitution, which he believed to be necessary for the new nation.

“The paradox is that the guarantee of Americans’ individual liberties against government interference was produced by a tug of war between two men, Madison and Henry, neither of whom was primarily motivated by a concern for individual liberties.” (Rutland pg. 78).

Although the promise of a bill of rights had been made the actual creation of one was going to be a far greater struggle. Madison remained true to his word and upon his narrow victory as a Representative in Congress; he did in fact make a motion to begin work on the bill of rights while at the same time working on a draft. He remained true to his promise and authored the document so as to maintain control of the ideas proposed. In this manner, the document he loved, the Constitution, he hoped would remain in its original form. “More than three

months after the date when Congress was scheduled to begin its session, Madison asked the House to resolve itself into a Committee of the Whole to consider amendments “as contemplated in the fifth article of the constitution.” (Rutland pg. 200).

#### *Origins of the Rights:*

“As with the Declaration of Independence and the U.S. Constitution, the first thing to get clear about the Bill of Rights is that it was neither a sudden, original, spontaneous product of a few minds nor an updated American version of Magna Carta. The bill of rights had a long historical pedigree, but that pedigree lies substantially more in documents written on American shores.” (Lutz. Pg.19).

During the lengthy process between the Constitutional Convention in 1787 and the opening of the first Congress in March of 1789 Madison had plenty of opportunity to research those policies already in existence within the individual states, ideas discussed in meetings by men of great political influence, articles published in newspapers and previously created charters, state constitutions and declarations of rights. Madison also had time to reflect on the thinking and works of some great philosophers of the time, men who were often considered to be radical in thought. Incorporating all that he could he began to draft what he saw as a useable Bill of Rights, one that would not alarm the Anti Federalists or anger the Federalists. He had to declare rights in a manner of speaking to please most everyone in order to avoid further difficulties in the political arena of the newly formed government.

The Bill of Rights can be traced to many documents, primarily those written by the colonists in America. From a historical perspective it is known that during the period of colonization, England was occupied in other endeavors happening within its own country and the colonists were left largely to their own devices.

The New England colonists were religious and believed that all individuals should be treated well. The Bible was cited often in these early colonial documents along with the idea that in order to survive the ever-present harsh conditions, cooperation always had to be an underlying principle. So, the ideas of living your life to the best of your ability in the eyes of the lord, helping others to survive and being equal within the community all lent themselves to the creation of these early colonial documents.

The Massachusetts Body of Liberties of 1641  
was a document created under the guidelines

mentioned above. From this document alone Madison derived sixteen of the twenty-six rights mentioned in the final document. "Pennsylvania's frame of government (1682) contained 55 percent (15 out of 27) of the rights later found in the U.S. Bill of Rights." (Lutz pg. 35).

The Virginia Declaration of Rights contained twenty of the forty-two rights that Madison originally presented. Delaware's document contained twenty, Maryland's twenty-four, North Carolina's eighteen, Massachusetts twenty-four and New Hampshire's twenty-one. (Note, of the forty-two proposed by Madison, only twenty-seven fall into the first ten amendments, The Bill of Rights of the Constitution).

The origins of our beloved first amendment, which states that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances, comes from several state constitutions. When the first amendment is taken apart the idea of free speech was first contained in the constitution of Pennsylvania. The idea of free press was more universal in the constitutions of Virginia, Pennsylvania, Delaware, Maryland, North Carolina, Massachusetts and New Hampshire. The right to assemble comes from the constitutions of Virginia, Maryland, and North Carolina.

Looking at the second amendment, the right to bear arms was already protected by Pennsylvania, North Carolina and Maryland. It appears that Madison had the good sense to use ideas already imbedded within the states own constitutions to create the Bill of Rights. In this manner, the state delegates would be more inclined to vote for its passage and thus ratify the Constitution.

The influences of the English are seen with the inclusion of four rights from the Magna Carta, one from the 1628 English Petition of Rights and two from the 1689 English Bill of Rights. (Poore: Original Documents). In determining why more influence did not originate from the English, one must be careful to note that English Common Law was not comparable in its definition of liberties to those liberties assumed once the colonists were in America.

"One meaning had to do with the general condition of men based on natural law, or a condition of all Englishmen based on their common legal and constitutional past. The second meaning had to do with the medieval idea of a hierarchy of liberties, in

which liberties varied according to an individual's or a groups station and purpose in life." (Lutz pg. 37).

In conclusion, it is interesting to note that the most beloved portion of the Constitution was an act of hindsight to satisfy the demands of individual states, created in part out of a quarrel amongst two opposing political forces, by a man who never really wanted the addition of a Bill of Rights to begin with.

### **Rationale**

The importance of this unit is paramount to the instruction of our countries form of government. The Constitutional unit will only be strengthened by my knowledge of the Bill of Rights. The document together in its entirety is the foundation of our country's government. Many people incorrectly believe that our Constitution, which includes The Bill of Rights, was created as one document at the Constitutional Convention in Philadelphia. The unit will teach all parts of the Constitution. My hope is that the addition of the knowledge I have gained on the Bill of Rights will make the students learning all that more interesting and give them the understanding that our Founding Fathers were not infallible but rather ordinary men who had to learn to compromise and deal with the outcomes of decisions whose results were often unknown.

The unit has great value due to the basic government policies being taught. Students need a solid foundation of understanding on which to add current as well as, future knowledge. I also feel that students have a higher interest and thus a better comprehension if learning is interesting. By adding the story of the Bill of Rights into the overall unit of the Constitution it gives the students some insight into the undertakings of our Founding Fathers and makes these men more real.

### **Nevada State Standards**

#### ***History***

- 1.8.2 creation of a tiered time line.
- 2.8.1 frame historical questions that examine multiple viewpoints.
- 2.8.2 evaluate sources of historical information based on: bias, credibility, cultural context, reliability, and time period.
- 6.8.7 explain why the Constitution was written.
- 6.8.8 identify the principles of the Bill of Rights.

#### ***Civics***

- 1.8.2 describe the significance of the Declaration of Independence and the U.S. Constitutions s foundation of U.S. democracy.

- 1.8.4 explain popular sovereignty and the need for citizen involvement at all levels of U.S. government.
- 1.8.5 describe how the U.S. Constitution serves as a device for preserving national principles and as a vehicle for change, including knowledge of the formal process of amending the U.S. Constitution.
- 2.8.1 explain the functions of the three branches of government as found in the U.S. Constitution.
- 2.8.2 explain the historic compromises that created a two-house Congress and identify the responsibilities of each.
- 2.8.3 discuss enumerated and implied powers of the U.S. Congress.
- 2.8.4 describe the duties of the President.
- 2.8.7 explain the system of checks and balances in the design of the U.S. Constitution.
- 3.8.1 give examples of governmental powers that are distributed between the state and national government.
- 3.8.2 define federalism.
- 3.8.3 explain how the supremacy clause of the U.S. Constitution defines the relationship between state and national governments.
- 5.8.1 identify the rights, privileges, and responsibilities associated with U.S. citizenship.
- 5.8.4 explain the necessity of the Bill of Rights for a democratic society.
- 5.8.6 identify examples of conflict resolution that respect individual rights at school and in the community, within the United States.

### **Objectives:**

- Students will create a tiered time line showing the overlapping events during the period from 1787-1791.
- Students will interpret historical data and compose historical statements that address multiple viewpoints.
- Students will compare and contrast historical sources to identify bias, cultural context, reliability, and time period comparisons.
- Students will be able to discuss and explain the purpose of the Bill of Rights and the contents of this document.
- Students will be able to identify the Declaration of Independence, the U.S. Constitution and the Bill of Rights. Students will be able to analyze these documents and discuss the differences among them.
- Students will know the definition and application of the terms Popular Sovereignty and Federalism.
- Students will identify the process for changing the Constitution in terms of adding amendments.
- Students will create a chart showing the amending process.

- Students will be able to classify the parts of our government into the area to which they belong in terms of the three branches.
- Students will create a flow chart demonstrating an understanding of the checks and balances system.
- Students will design a project that demonstrates the basic fundamental layout of our government.
- Students will be able to compare the Virginia Plan and the New Jersey Plan, explaining the reasons behind the need for the Connecticut Plan.
- Students will analyze the various powers granted in the constitution and explain to which constituents they belong.
- Students will recognize the accomplishments of key historical people and identify their contributions.

### **Chronological content outline:**

The order of my unit on the Bill of Rights and the Constitution will follow our studies of the Revolutionary War and the beginnings of the new government. We will have discussed the Articles of Confederation, the first Constitution in the new country. We will also have addressed the problems with the set up of our government and the challenges it presented. Shays Rebellion as a precursor to the eventual decision to meet in Philadelphia in the spring of 1787 will also have been covered.

It is at the Convention in May of 1787 that this unit will begin.

- I. Constitutional Convention Philadelphia.
  - a. The Framers and their ideas.
  - b. The Virginia Plan.
  - c. The New Jersey Plan.
  - d. The Great Compromise.
    1. The 3/5 Compromise.
    2. Slave Trade
- II. Proposal for a Bill of Rights
  - a. George Mason and Elbridge Gerry.
- III. Reasons for including/creating a Bill of Rights.  
(Ratification)
  - b. James Madison and the Federalists.
  - c. Patrick Henry and the Anti-Federalists.
- IV. Origins of the Bill of Rights
  - a. English Influences
  - b. Influences of State Constitutions and Colonial Charters
  - c. James Madison's purpose as the author.
- V. The Constitution as a Document
  - a. The Preamble

- b. Underlying Principles
- c. Types of Powers
- d. Separation of Power
- e. Amending Process
- f. Articles
- g. Bill of Rights
- h. Other Amendments
- i. Interpreting the Constitution

This will conclude the unit, with the next area of study being the New Nation, early challenges and the emergence of political parties. As with all historical curriculum, the Constitution will be revisited throughout the year, as the content deems necessary.

**Teaching strategies:**

In introducing the unit I plan to use copies of the actual documents for the students to view. For many it may be the first time they have actually seen the documents in their original format. From here, we will have a class discussion lead by myself. The goal will simply be to generate interest, create questions and formulate ideas as to why some things may be the way they are.

Next I see some direct instructions, not too much, but enough to actually address some of the questions that arose and further disseminate information in a quick fashion. Small groups will be used to work on comparison and contrasting of documents, branches of government and distribution of power. From the groups projects will emerge that show what is being learned. These projects will in turn be presented to the rest of the class to reinforce the concept.

Through out the course of the unit the students will be working together to create a play. The play will address all the components we are studying. The play will in turn be presented to a group of fourth grade students.

I believe strongly in the education of children through participation. Therefore as we progress through our unit of study on the Constitution the lessons will include a wide variety of teaching strategies and student activities. Some not mentioned above include: graphic organizers, cooperative learning such as A/B partners, think pair share and others, non fiction readings, historical comparisons, simulation and inquiry.

In the Social Studies classroom it is critical to engage students in their learning, so that they are thinking about all that they are learning while at the same time they are acquiring new knowledge with the ability to apply it to other areas.

## **Annotated Bibliography:**

### **Research**

Black, Eric. (1988). *Our Constitution: The Myth that Binds Us*. Boulder: Westview Press.

A great little book for a quick historical look at the events and figures that made history during this time period. The book is set up in a question format. The book contains an entire section on the Bill of Rights.

Cogan, Neil. (1977). *The Complete Bill of Rights: The Drafts, Debates, Sources and Origins*. Oxford: Oxford Press.

A compiling of all the information presented in a different manner. Similar in usage to the book compiled by the Government Printing Office.

Levy, Leonard Williams. (2001). *Origins of the Bill of Rights*. Yale University Press.

This book looks at documents and ideas that resulted in the formation of our current Bill of Rights.

Newman, Roger. (1977). *The Constitution and Its Amendments v2*. New York: MacMillan Reference.

A condensed history is provided in an easy to read format. The reader is provided with information beginning with the Continental Congress and moving forward on the timeline up to the addition of a Bill of Rights. The author does a great job of tying the information together in a basic knowledge approach giving the reader insight without going in depth in any one area.

Poore, Ben. (1878). *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of The United States*. Washington: Government Printing Office.

An exceptional resource of all the original charters, constitutions and early documents of Colonial America.

Rutland, Robert. (1955). *The Birth of the Bill of Rights 1776-1791*. Chapel Hill: University North Carolina Press.

A volume created to show how Americans rely on the legal aspect and rights guaranteed them in the area of personal freedoms.

### **Journals:**

Handlin, Oscar. (1993). The Bill of Rights in Its Context. *The American Scholar*. 62(2), 177-186.

An interesting article on how Americans tend to interpret the Bill of Rights to our own modern day use. The article does not lend itself to the topic of the essay presented here, rather it is a good read on how lawyers tend to deal with

the interests of their own clients which in turn distorts the accuracy of the framers intent and puts a bias on the historical accuracy of the document.

Leibiger, Stuart. (1993). James Madison and Amendments to the Constitution, 1787-1791: "Parchment Barriers." *The Journal of Southern History*. V59 Issue 3, 441-468.

This article discusses the historical perspective of Madison's thinking and the resulting changes that occurred in his thinking. Insight is offered into the theoretical juggling that occurs as Madison determines what appears to be the best case-worst case scenario in terms of adding a Bill of Rights to the Constitution.

The author does a good job of getting the reader to clearly see the four phases James Madison moves through as he works to secure ratification of the Constitution and ultimately works to add the Bill of Rights.

Lutz, Donald S. (1992) The State Constitutional Pedigree of the U.S. Bill of Rights. *Publius: The Journal of Federalism*. 22(2), 19-45.

Rakove, Jack, N. (1992). James Madison and the Bill of Rights: A Broader Context. *Presidential Studies Quarterly*. 22(4), 667-676.

Schwartz, Stephan A. (May 2000). George Mason: Forgotten Founder, He Conceived the Bill of Rights. *Smithsonian*. V31 Issue 2, 143-150.

An interesting look at the man who has played a large role in the creation of our countries most important documents. The article focuses on the life of George Mason, his political beliefs and the reasons as to why we have perhaps forgotten him or not given him credit for his role as a founding father in American History. George Mason was the individual who proposed that a Bill of Rights be drafted and added to the Constitution before the convention convened. The proposal was vetoed overwhelmingly and thus in the end Mason did not put his hand to the signing of the Constitution.

### **Annotated Bibliography for Classroom Use:**

Agel, Jerome, (1997). *We The People*. New York: Barnes & Noble.

Contains copies of all the documents the American History Teacher would ever hope to find in one volume. A must for reference material.

Bennett, William, (1998). *Our Country's Founders*. New York: Scholastic.

Book contains a collection of independent stories, letters, reflective thoughts of the great people of that day.

Dudley, William, (1990). *The U.S. Constitution: Locating the Author's Main Idea*. New York: Greenhaven Press.

A good resource to use in comparing ideas and looking to identify the main point. Would be especially useful to students needing to improve on these skills.

Faber, Doris & Harold, (1987). *We the People: The Story of the United States Constitution Since 1787*. New York: Charles Scribner's Sons.

A quick read full of information. Good for a teacher looking to gain knowledge on the topic relatively quickly.

Keenan, Joseph, (1975), *The Constitution of the United States*. Illinois: Dorsey Press.

An informative self teaching book. This book walks you through the Constitution step by step and offers explanations of each section along the way.

Levy, Elizabeth, (1987). *If You were There When They Signed the Constitution*. New York: Scholastic.

A good book for students to read on their own, it lets them go back in time to see what it was like while the founding fathers were signing the Constitution.

McPhillips, Martin, (1985). *The Constitutional Convention*. New York: Silver Burdett Publishers.

Standard source of student research. A good index for students to refer to for specific information.

Spier, Peter, (1987). *We the People: The Constitution of the United States of America*. New York: Delacorte Press.

Another good children's book. Written as a picture book, it shows many illustrations which support the ideas of the Constitution. Book also contains a three page list of research type information as well as the Presidents and the full text of the Constitution.

A note: The Virginia Declaration of Rights can be found at

[www.usconstitution.net/vdeclar.html](http://www.usconstitution.net/vdeclar.html)

and the Maryland Constitution can be found at

[www.mdarchives.state.md.us/msa/mdmanual/43const/html/00dec.html](http://www.mdarchives.state.md.us/msa/mdmanual/43const/html/00dec.html)